

### **REMARKS**

Applicant has reviewed and considered the Office Action mailed on February 17, 2010.

Claims 1, 20, 47, and 48 have been amended herein and no claims have been canceled or added. As a result, claims 1, 3-7, 16-21, 23, 25, 32, 34, 35, 38-42, 47, and 48 are still pending in this application.

### **Objection to the Specification**

The specification has been objected to as introducing new matter into the disclosure of the invention.

The Applicants respectfully traverse this objection. The Examiner takes the position that the following language added to the specification is new matter:

“For example, in at least one software implementation, the invention is embodied as instructions stored on a storage medium that may be executed by a computing platform.”

The Applicants respectfully disagree because substantially identical language was included within claim 32 of the specification-as-filed. That is, the preamble of claim 32 within the specification-as-filed includes the language “a storage medium having instructions stored thereon that, when executed by a computing platform, result in:.” As is well known, the claims of a patent application are part of the specification and subject matter from the original claims is not new matter when later added to the description. For example MPEP § 608.04(a) states that “Matter not in the original specification, claims, or drawings is usually new matter.” As the identified language was in the original claims, it is not new matter. Therefore, it is respectfully requested that the new matter objection be withdrawn.

### **35 U.S.C. § 112 Rejection of the Claims**

Claims 32, 33, 35, and 38 were rejected under 35 USC § 112, first paragraph, as failing to comply with the written description requirement, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

With regard to claims 32, 35, and 38, the Examiner takes the position that the specification fails to disclose “A computer readable storage medium having instructions ....” The Applicants respectfully disagree. As stated in the previous section of this response, the specification of the present application has been amended to include the language:

“For example, in at least one implementation, the invention is embodied as instructions stored on a storage medium that may be executed by a computing platform.”

It is submitted that this language would clearly convey to someone skilled in the art that the inventors had possession of the claimed invention at the time the application was filed. Different forms of storage media that have computer executable instructions stored on them were also disclosed in the specification-as-filed (e.g., see page 14 of the specification-as-filed). In addition, techniques for storing computer executable instructions on a storage medium are very well known in the art.

Based on the foregoing, it is respectfully requested that the Examiner withdraw the rejection under 35 USC § 112, first paragraph.

Claim 33 was canceled in a previous response.

### **35 U.S.C. § 101 Rejection of the Claims**

Claims 1, 3-7, 16-21, 23, 25, 32, 34, 35, 38-42, 47 and 48 were rejected under 35 USC § 101 as being directed to a “program per se” which is non-statutory subject matter.

Independent claim 20 is an apparatus claim that is directed to an access point for use in a wireless network implementing spatial division multiple access. Independent claim 20 has been amended to include “a plurality of antenna elements” and to indicate that the multi-user wireless transceiver is “in communication with said plurality of antenna elements.” For at least this reason, this claim is not directed to a “program per se” and is not non-statutory subject matter.

Independent claim 39 is an apparatus claim that is directed to a system that comprises “a plurality of antenna elements that includes at least one dipole antenna element.” In addition, claim 39 indicates that the “multi-user wireless transceiver” is “in communication with said

plurality of antenna elements.” For at least this reason, this claim is not directed to a “program per se” and is not non-statutory subject matter.

Independent claim 32 is a Beauregard claim that is directed to a “computer readable storage medium having instructions stored thereon that, when executed by a computing platform, result in:.” It is submitted that a claim of this type is statutory subject matter and does not represent a computer program per se. “When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized.” MPEP § 2106.01.

Independent claims 1, 47, and 48 have been amended herein to delete the term “computer implemented” from the preambles thereof. It is submitted that these process claims are statutory because they are each tied to particular apparatuses (namely, “user devices”) and because they recite physical steps that involve the particular apparatuses (e.g., transmitting an acknowledgement (ACK) request to each user device ...). The claims may be implemented with or without a computer.

The specification has been amended herein to change the paragraph identified within the office action in a manner this is believed to address the Examiner’s concerns.

Claims 3-7, 16-19, 21, 23, 25, 34, 35, 38, and 40-42 are dependent claims. These claims should be allowable for at least the same reasons as their corresponding base claims discussed above.

#### **Response to General Remarks**

The telephone number of Applicant’s counsel has not changed and efforts will be made in the future to respond to all messages in a timely manner.

**Conclusion**

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested.

Respectfully submitted,

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By their Representatives,

**CUSTOMER NUMBER: 45643**

480-948-3745

Date: April 12, 2010

By \_\_\_\_\_

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 12th day of April, 2010.

  
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